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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/737,129	12/15/2003	Alan Edward Sherry	7803C	5745

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EXAMINER

OGDEN JR, NECHOLUS

ART UNIT

PAPER NUMBER

1751

DATE MAILED: 04/13/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

Application No.

10/737,129

Applicant(s)

SHERRY ET AL.

Examiner

Necholus Ogden

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 15 December 2003.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-15 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-15 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_.
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_.

## DETAILED ACTION

### *Claim Rejections - 35 USC § 102*

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

2. Claims 1-3, 5-6 are rejected under 35 U.S.C. 102(e) as being anticipated by Taylor (6,107,261).

Taylor discloses an antibacterial composition in the form of a non-woven wet wipe composition comprising 0.3% Triclosan, 0.75 ammonium lauryl sulfate, 5.0% dipropylene glycol and balance being water (see example 17).

As this reference teaches all of the instantly required it is considered anticipatory.

3. Claims 1-3, 6-7 and 10 are rejected under 35 U.S.C. 102(b) as being anticipated by Pregozen (5,141,803).

Pregozen discloses a non-woven wet wipe impregnated with a composition comprising 0.15% Mironal; 0.700% Cosmocil; 0.5% propylene glycol; adjunct material and water with a pH of 4.2 (see example 1).

As this reference teaches all of the instantly required it is considered anticipatory.

***Claim Rejections - 35 USC § 103***

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

5. The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

6. This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

7. Claims 1-6 and 10-15 are rejected under 35 U.S.C. 102(b) as anticipated by or, in the alternative, under 35 U.S.C. 103(a) as obvious over Skrobala et al (5,342,534).

Skrobala et al disclose a hard surface cleaner in the form of a pre-moistened wiping article comprising a non-woven substrate having wood pulp

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and synthetic fibers in a mixture of 30-60 and 70-40, respectively (col. 2, lines 15-61). Skrobala et al further teach that said substrate comprises a unit weight in the range of 55 to 105 g/m<sup>2</sup> (col. 3, lines 45-49) and further comprising a cleaning composition in the amount from 0.001 to 1.0% of an alkyl polyglycoside (col. 4, lines 12-68). Also, Skrobala teach that preservatives or antimicrobial components such in an amount from 0.00015% to 0.0045% by weight (col. 5, lines 20-32) and other optional ingredients such as glycols and glycol ether solvents (col. 6, lines 3-23). Note, see Table I and compositions M-S.

As this reference teaches all of the instantly required it is considered anticipatory.

In the alternative, Skrobala et al is silent with respect to the wetness and fluid capacity, however, it would have been inherent to the compositions of Skrobala et al to comprise these characteristics since the compositions and wipe composite encompass the claimed ranges and comprise the same components as claimed, one of ordinary skill in the art would have been expected the compositions of Skrobala et al to comprise other characteristics as claimed, absent a showing to the contrary.

8. Claims 1-2, 4-6 and 10 are rejected under 35 U.S.C. 103(a) as being unpatentable over Jones et al (4,753,844).

Jones et al disclose a semi-moist wipe comprising a non-woven sheet having a weight basis of 34 to 153 g/m<sup>2</sup> and composite of 50-70% cellulose material and 30-50% polyester (col. 5, lines 5-40). Jones et al further teach that said wipe compositions have a pH of 8-12; comprise solvents such as glycol ethers in an amount from 9-60% (col. 7, lines 5-35%); and further include surfactants such as alkyl polyglycosides in an amount from 0.05 to 2.0% (col. 8-

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9, line 32). Moreover, Jones et al include bacteriostatic components in an amount from 0.05 to 0.3% by weight (col. 9, lines 55-col. 10, line 17). Note, see example 10.

Jones et al do not teach, in the example, the claimed components in the requisite proportions.

It would have been obvious to one of ordinary skill in the art to comprise a moist wipe as claimed according to the teaching of Jones et al because Jones et al teach each of the claimed components in their requisite proportions and one of ordinary skill in the art would have been motivated to include non-preferred embodiments to comprise applicant's invention, absent a showing to the contrary. Furthermore, it has been held that a reference may be relied upon for all that it would have reasonably suggested to one having ordinary skill the art, including nonpreferred embodiments. *Merck & Co. v.*

*Biocraft Laboratories*, 874 F.2d 804, 10 USPQ2d 1843 (Fed. Cir.), cert. denied, 493 U.S. 975 (1989). See also *Celeritas Technologies Ltd. v. Rockwell International Corp.*, 150 F.3d 1354, 1361, 47 USPQ2d 1516, 1522-23 (Fed. Cir.1998).

9. Claims 1 and 6-9 are rejected under 35 U.S.C. 103(a) as being unpatentable over Jones et al (5,753,844) in view of Kramer et al (5,620,527).

Jones et al is relied upon as set forth above. Specifically, Jones et al teach a wipe comprising an antimicrobial active component, but are silent with respect to applicant's specific quaternary ammonium component.

Kramer et al teaches a cleansing a disinfectant composition for hard surfaces comprising quaternary ammonium salts, which may be incorporated into wipes as

decontaminating agents (see abstract). Kramer et al further teaches that quaternary ammonium salts such as dimethyl ammonium chloride are well known disinfectant components (col. 3, lines 50-col. 4, line 17).

It would have been obvious to one of ordinary skill in the art to include the quaternary ammonium salt of Kramer et al to the compositions of Jones et al because Jones et al use biocides for the purpose of disinfecting substrates and Kramer et al teach that quaternary ammonium salts are well known and may be used in the form of wipes for the purpose of disinfecting hard surfaces.

### ***Double Patenting***

10. The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. See *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and, *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.130(b).

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

11. Claims 1-15 are rejected under the judicially created doctrine of double patenting over claims 1- 13 of U. S. Patent No. 6716805 since the claims, if allowed, would improperly extend the "right to exclude" already granted in the patent.

The subject matter claimed in the instant application is fully disclosed in the patent and is covered by the patent since the patent and the application are claiming

common subject matter, as follows: pre-moisten wipe with surfactants, solvents and antimicrobials.

Furthermore, there is no apparent reason why applicant was prevented from presenting claims corresponding to those of the instant application during prosecution of the application, which matured into a patent. See *In re Schneller*, 397 F.2d 350, 158 USPQ 210 (CCPA 1968). See also MPEP § 804.

12. Claims 1-15 are provisionally rejected under the judicially created doctrine of double patenting over claims 1-4, 14-22, and 25-28 of copending Application No. 09/267,186. This is a provisional double patenting rejection since the conflicting claims have not yet been patented.

The subject matter claimed in the instant application is fully disclosed in the referenced copending application and would be covered by any patent granted on that copending application since the referenced copending application and the instant application are claiming common subject matter, as follows: pre-moistened wipe with surfactants, solvents and antimicrobial agent.

Furthermore, there is no apparent reason why applicant would be prevented from presenting claims corresponding to those of the instant application in the other copending application. See *In re Schneller*, 397 F.2d 350, 158 USPQ 210 (CCPA 1968). See also MPEP § 804.

### ***Conclusion***

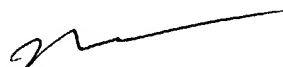
Any inquiry concerning this communication or earlier communications from the examiner should be directed to Necholas Ogden whose telephone number is 571-272-1322. The examiner can normally be reached on M-T and Th-Fri.



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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Yogendra N. Gupta can be reached on 571-272-1316. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Necholus Ogden  
Primary Examiner  
Art Unit 1751

No  
4-4-03